IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.1176 to 1178 of 2007

The Commissioner of Income-tax
Salem. ... Appellant/ Respondent

Vs.

M/s.R.R.K.Granites
(formerly known as M/s.Salem
Dolerites Limited)
LRN Buildings,
Sarada College Road
Salem - 636 007. ... Respondent/ Appellant

Tax Case Appeal filed under Section 260-A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, 'D' Bench, Chennai dated 8.9.2006 and made in I.T.A.No.679, 680/Mds/1999 and 1653/Mds/2003 for the assessment years 1994-95, 1995-96 and 1996-97 respectively 1. against the order of the Commissioner of Income Tax (Appeals) Chennai-34 dated 14.1.99 in ITA NO.445C/98-99 A/Y 1994-95 against the order of the Dy Commissioner of Income Tax Special Range, Salem-7 dated 30.3.1998 PAN/GIR No.S-155 against the order of the Commissioner of Income Tax (Appeal)VII, Chennai-34. 2. dated 8.1.99 in ITA NO.446C/98-99 A/Y 1995-96 and against the order dated 30.3.1998 in PAN/GIR No.S-155 of Dy. Commissioner of Income Tax, Special Range, Salem -7 and 3. against order of the Commissioner of Income Tax (Appeals) Salem 636 007 dated 6.6.2003 ITA.NO.12/99-00 against the order of the Joint Commissioner of Income Tax Spl. Range, Salem dated 18.2.99 in PAN/GIR No.R-113 A/Y 1996-97.

For Appellant : Mr.N.Muralikumaran

JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

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The assessment years are 1994-95, 1995-96 and 1996-97. The Revenue filed these appeals formulating the following common questions of law:

> "1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that quarry depletion expenses are allowable expenditure for the assessment years 94-95(T.C.No.1176 of 2007, 1995-96 (T.C.No.1177 of 2007) and 1996-97 (T.C.No.1178 of 2007)?
>
> 2. Whether on the facts and in the circumstances of the case, Section 35 E or 37 of Income Tax Act is attracted for claiming deduction of quarry depletion expenses?
>
> 3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not considering the fact that no depreciation was allowable on deferred revenue expenditure despite the assessee had been claiming the said amount as expenditure?

2. As the facts in all the appeals are one and the same, the facts pertaining to the assessment year 1994-95 are taken up for discussion.

3. The assessee/respondent was engaged in the business of production of granite blocks. For the assessment year, 1994-95, pursuant to the notice under Section 148, assessee/respondent filed the return on 31.10.1995 disclosing a loss of Rs.69,014/- representing unabsorbed depreciation for the assessment year 1991-92 and 1993-94. The return was processed under Section 143(1)(a) accepting the returned loss. Thereafter, another notice under Section 148 was issued 30.12.1996 and as per the request of the assessee, the return filed on 31.10.1995 was treated as the return filed in response to the notice. The assessee company has accounted the quarry expenses and claimed depreciation in its books of accounts. In the income computation statement, the company claimed the same as business expenditure. The assessing officer disallowed the claim. The Commissioner of Income-tax (Appeals) upheld the order of the assessing officer when an appeal was filed. On further appeal to the Tribunal, the Tribunal allowed the assessee's appeal.

4. Learned counsel appearing for the revenue has very strenuously contended that the order of the Tribunal is contrary to the statutory provision, in the sense, the assessee company violated the statutory provision Section 37 of the Income-tax Act, which provides that any expenditure incurred has to be claimed in the year in which the expenses have been incurred and cannot be spread over to subsequent years.

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5. We heard the argument of the learned counsel for the revenue and perused the material on record.

6. The undisputed facts are that the respondent was granted granite quarry lease for ten years and it incurred a total expenditure of Rs.89,25,321/- towards development of quarries such as clearing of overburdens to reach granite dyke for production. This expenditure was incurred for exploitation of the granite for the entire lease period of ten years. The respondent treated this expenditure as deferred Revenue expenditure and claimed 1/10th of it spreading over for ten years. Though such claim of the respondent was allowed by the assessing officer for earlier years, the claim made by the respondent for the assessment years under consideration was negatived. The Tribunal taking into consideration of the nature of business of the respondent has held that deferred revenue expenditure was not strange to the Income-tax Act. Though the Revenue expenditure has to be allowed in its entirety in the year in which it was incurred, in the case on hand, since charging the entire expenditure on an year would give distorted picture of profit and loss of the respondent, it was appropriate to spread over the expenditure over a period of ensuring years so as to arrive at true working result of the Company.

7. In the case of MADRAS INDUSTRIAL INVESTMENT CORPORATION LIMITED VS. COMMISSIONER OF JINCOME-TAX reported in (1997) 225 ITR 802, the appellant Company issued debentures in December 1966 at discount. The total discount on the issue of Rs.1.5 crores amounted to Rs.3 lakhs. For the assessment year 1968-69, the appellant company wrote off Rs.12,500/- out of the total discount of Rs.3 lakhs being the proportionate amount of discount for the period of six months ending with June 30, 1967, taking into account the period of 12 years which was the period of redemption and dividing the discount of Rs.3 lakhs over the period of 12 years. On the above facts, while answering the question whether appellant could write off the discount which is a revenue expenditure proportionally each year over the period for redemption, the Supreme Court held thus:

> "Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books, over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might have a very distorted picture of the profits of a particular year. Issuing debentures is an instance where, although the assessee has incurred the

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liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of debentures."

8. The facts of the present case are similar to the above referred Madras Industrial Investment Corporation case. Although the respondent incurred the entire expenditure of developing the quarry in a particular assessment year, the expenditure so incurred is to secure the benefit of making the quarry ready for exploitation over a number of years. There is a continuing benefit to the business of the respondent over the entire lease period of ten years. Therefore, the facts of the case justify the spreading over of the claim for the lease period.

9. For the reasons aforesaid, we find no question of law is involved in these appeals for entertainment. The Tax Case appeals are dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Asst.Registrar,
   Income-tax Appellate Tribunal
   Bench D Rajaji Bhavan, III Floor,
   Besant Nagar,
   Chennai. 90.

2. The Commissioner of Income Tax
   (Appeals) - VII, Chennai.34.

3. The Deputy Commissioner of
   Income-tax, Special Range,
   Salem - 7

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4. The Commissioner of Income Tax,
Salem

5. The Commissioner of Income Tax (Appeals)
Salem.

1 cc to Mr.N. Muralikumaran, Advocate, SR. 54009

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